LIBRARY

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 1003

C. GEORGE SWALLOW, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Having been convicted after a jury trial in the United States District Court for the District of Colorado of wilful attempts to defeat and evade income taxes, petitioner was sentenced to concurrent prison terms of one year and one day. The court of appeals unanimously affirmed (307 F. 2d 81), and this Court denied certiorari (371 U.S. 950, rehearing denied, 372 U.S. 925). Petitioner now seeks review of the denial of a motion under 28 U.S.C. 2255 attacking that judgment.

Petitioner's motion alleged that the statutes under which he was convicted are unconstitutional and that his sentence is, therefore, void. The motion was denied by the district court, and the court of appeals affirmed on December 12, 1963. 325 F. 2d 97. The petition for a writ of certiorari was filed on April 14, 1964.

Petitioner makes four broad constitutional challenges: (1) that the income tax laws are too complex to be understood; (2) that the income tax laws are unjustly discriminatory; (3) that a portion of the federal revenue is impermissibly spent for foreign aid; (4) that the First Amendment is violated by provisions excluding from a minister's gross income the rental value of a home furnished to him and allowing deductions for contributions for religious purposes.

None of these contentions affects the validity of petitioner's conviction, even assuming *arguendo* that this action could be maintained following his release from custody. Petitioner did not contend at his trial that he was misled or confused by the alleged complexity of the tax laws, and the evidence supporting the judgment of conviction disclosed a simple scheme whereby a corporation controlled by petitioner was used to pay the personal expenses of petitioner and his wife. The alleged discriminatory features of the tax laws also do not bear upon petitioner's case; and

---

[1] Although petitioner was serving his sentence at the time he filed the motion, he was released on June 28, 1963, which was more than five months before the date of the court of appeals' decision.

they are, in any event, reasonable tax classifications well within Congress' taxing power. *Brushaber* v. *Union Pac. R. Co.*, 240 U.S. 1, 24-26. Nor is petitioner in any position to challenge the purpose for which public funds have been spent merely because he has been convicted of income-tax evasion. His imprisonment is not attributable to Congress' appropriation of tax money for foreign aid, nor does he contend that his failure to pay taxes was prompted by his opposition to such expenditures. Hence, even if Congress' foreign-aid appropriations were constitutionally vulnerable—and they clearly are not—petitioner could not be said to have "sustain[ed] some direct injury as the result of" such appropriations. *Massachusetts* v. *Mellon*, 262 U.S. 447, 488. Finally, the validity under the First Amendment of the special treatment afforded certain taxpayers or certain kinds of expenses cannot be contested by a taxpayer such as petitioner who would not have the benefit of such treatment even if his contention were sustained. For if the assailed provisions were unconstitutional—which we do not concede—petitioner, whose conviction did not turn on the disallowance of any "non-religious" contributions or on the inclusion of any rental allowance as income on his return, would not be entitled to relief. Consequently, petitioner is not asserting "his own constitutional rights or immunities," *United States* v. *Raines*, 362 U.S. 17, 22; *McGowan* v. *Maryland*, 366 U.S. 420, 429, and his constitutional challenge must be dismissed.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

MAY, 1964.

U. S. GOVERNMENT PRINTING OFFICE 1964 730836 964